



ANNO SEPTIMO ET OCTAVO

VICTORIÆ REGINÆ.

No. 3.—1844.

Repealed by No 21 - 1852

By His Excellency GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies and Vice-Admiral of the same by and with the advice and consent of the Legislative Council.

AN ORDINANCE to Prevent the Extension of the Scab in Sheep in South Australia.

WHEREAS the Laws at present in force within this Province for preventing the extension of Scab in Sheep have not been found to produce the results contemplated by the Legislature and it is necessary to make new provisions in that behalf:

BE IT THEREFORE ENACTED BY HIS EXCELLENCY THE GOVERNOR of South Australia with the advice and consent of the Legislative Council thereof: That from and after the First day of May an Act or Ordinance of the Governor with the advice and consent aforesaid passed on the eighth day of December in the year one thousand eight hundred and forty intituled "An Act for preventing the extension of the infectious disease commonly called the Scab in Sheep or Lambs in the Province of South Australia" and also an Act or Ordinance passed on the twenty-sixth day

4 Vict. No. 6.

5 Vict. No. 9.

day of October in the year one thousand eight hundred and forty one intituled "An Act to amend and extend the provisions of an Act intituled 'An Act for preventing the extension of the infectious disease commonly called the Scab in Sheep or Lambs in the Province of South Australia'" shall be and the same are hereby repealed and the present Ordinance shall commence and take effect.

Penalty on importing diseased sheep.

II. And be it enacted that every proprietor and other person by whom or under whose charge any flock of sheep or lambs infected in whole or in part with the said disease shall be imported or introduced by sea or land into this Province shall upon conviction forfeit and pay a penalty of One Shilling for every sheep or lamb composing the flock and every such sum may be levied by distress and sale of the sheep or lambs in respect of which the same is incurred whether the legal proprietor thereof be or be not known or be or be not subject to the jurisdictions of the Province.

Penalty on wilfully abandoning diseased sheep.

III. And be it enacted that whosoever shall wilfully set at large and abandon any sheep or lamb infected or tainted with the said disease shall upon conviction forfeit and pay a penalty of Fifty Pounds for every sheep or lamb so set at large and abandoned.

Penalty on driving diseased sheep on roads without warrant.

IV. And be it enacted that whosoever shall drive or conduct any sheep or lamb infected with the said disease on any road or way declared to be a public road within the meaning of this Ordinance without a proper warrant for such removal in manner aftermentioned shall forfeit and pay a penalty of Ten Pounds: Provided always that the respective Benches of Magistrates assembling in Petty Sessions throughout the Province at such places as may be appointed by the Governor or any two Justices with the sanction and approval of the Governor shall from time to time as occasion may require declare and define what roads or ways within their respective Districts are to be deemed public roads for the purposes hereof and shall forthwith transmit a sufficient description of every such road or way to the Colonial Secretary who shall cause the same to be notified in the Government Gazette at least three times successively and thereafter every such road or way shall be deemed a public road within the meaning of this Ordinance until such declaration shall be cancelled or varied by the like authority and in like manner.

What are to be deemed public roads.

Exception where roads cross ordinary runs of sheep notices of scab to be affixed.

V. Provided always and be it enacted that nothing hereinbefore contained shall be construed to prevent the driving of sheep or lambs across any such public road intersecting or crossing the ordinary runs where such sheep or lambs are usually depastured provided the proprietor or person in charge of such sheep or lambs shall cause a notice of such infection to be kept continually affixed containing the
word

word "Scab" in distinct legible characters at some conspicuous place at each end of such public road that is to say where it enters and where it leaves such land.

VI. And be it enacted that whensoever it may be necessary to remove any flock containing diseased sheep from one part of the Province to another the owner or person in charge of such flock or some person authorised by him shall cause the same to be dressed and shall at least a fortnight previous to such intended removal apply in writing to the nearest Bench of Magistrates or to any two Justices of the Peace residing near stating the place to which and the route by which it is intended to remove the said flock (being the nearest route or that by which the flock are the least likely to spread infection) and it shall be lawful for such Bench of Magistrates or any two of them on proof to their satisfaction of the flocks being duly dressed to grant a warrant under their hands in form or to the effect of the Schedule A hereto annexed authorising the removal of the said flock in which warrant shall be expressed the place to which and the route by which the said flock is to be removed and the time during which the warrant is to remain in force not exceeding one calendar month from the date thereof as well as the condition that the person to whom the same is granted shall give at least twenty-four hours previous notice of his intention to remove diseased sheep along such route under such warrant to every master or overseer of sheep through or adjoining whose run the route may pass and whosoever shall remove any such diseased sheep or lambs without such warrant or contrary to the provisions hereof shall upon conviction forfeit and pay for every such offence a sum not exceeding Ten Pounds nor less than Twenty Shillings.

Magistrates may authorise removal on proof of necessity and of due dressing and notice given.

VII. And be it enacted that whosoever shall without any proper warrant under the terms of this Ordinance drive or depasture any sheep or lambs infected with the said disease upon any appropriated land belonging to or lawfully occupied by another person or upon any waste lands of the Crown lawfully occupied by another person either exclusively or as a common right under any license or other authority from the Government shall on the complaint of such aggrieved party and on conviction forfeit and pay for every such offence a penalty not exceeding Twenty Pounds nor less than Forty Shillings.

Penalty on depasturing on runs of others.

VIII. And be it enacted that if any proprietor or person having the charge and management of any sheep or lambs infected with the said disease shall knowingly and wilfully turn out keep depasture drive or conduct or permit or suffer to be turned out kept depastured driven or conducted any such sheep or lambs so as that such diseased sheep or lambs shall communicate the said disease to the

Penalty on infecting clean flocks.

the clean flocks of another person by trespassing on the runs of such person or in any way offending against the provisions of this Ordinance then such proprietor or person in charge of diseased sheep shall be liable over and above any other penalty hereby imposed to forfeit and pay to the person to whose sheep or lambs the disease shall be so communicated such sum of money as in the judgment and discretion of the Justices aftermentioned shall be deemed sufficient to reimburse such person for the losses and expenses he shall have incurred or been put to thereby such sum not exceeding in any one case fifty pounds sterling to be recovered upon complaint by or on behalf of the injured party and duly proved before any three or more Justices of the Peace not interested in the dispute: Provided always however that no action or suit at law shall be brought in any Court in the said Province for or in respect of any loss expense or damage which shall or may be incurred as aforesaid after the cause shall have been heard and determined in a summary way as hereby provided and if any such action or suit shall be brought for such cause it shall be lawful for the Defendant to apply to the Court wherein such action or suit shall be brought to stay proceedings and such Court is hereby required to stay proceedings accordingly and to award such reasonable costs as shall be thereby incurred by the Defendant.

Penalty for butchers having infected sheep or exposing the carcass for sale.

IX. And be it enacted that if any butcher or other person shall have in his possession for the purpose of slaughtering for sale or shall slaughter or cause to be slaughtered for sale any sheep or lambs so infected as aforesaid or shall expose the carcass or any part thereof for sale in any public shop stall market or other place every such person shall be liable upon conviction thereof to a penalty of not less than Five nor more than Twenty Shillings for every such infected sheep or lamb so in his possession or slaughtered or of which the carcass or any part thereof shall be exposed for sale: Provided always that the flesh of all such infected sheep or lambs so slaughtered as aforesaid shall be seized condemned and destroyed in such manner as the convicting Justices may direct.

Flesh of infected sheep to be destroyed

Justices to grant a warrant for removal of sheep.

X. And be it enacted that when and so often as any offender shall be convicted under this Ordinance for turning out keeping depasturing driving or conducting of sheep or lambs infected with the said disease or for permitting or suffering any such sheep or lambs to be turned out kept depastured driven or conducted contrary to the provisions hereof and it is necessary to remove the said sheep or lambs to some place where the same may be lawfully turned out kept or depastured it shall be lawful for the convicting Justice or Justices to grant a warrant under his or their hand or hands in the form in the Schedule hereunto annexed authorising

thorising the removal of the said sheep or lambs and in every such warrant there shall be stated the place to which and the route by which the said sheep or lambs shall be removed and the time for which the same is granted not exceeding one calendar month and in case any such person shall detain or continue any such sheep or lambs on any lands or road or shall turn out keep depasture drive or conduct any such sheep or lambs without such warrant or contrary to the directions thereof such person shall be subject and liable to the penalties imposed and inflicted upon persons for turning out keeping depasturing driving or conducting such sheep or lambs contrary to the provisions of this Ordinance.

XI. And be it enacted that it shall be lawful for any Justice of the Peace upon information on oath from any proprietor or overseer in charge of sheep that he has reason to apprehend that infected flocks will be driven through the run where his flocks are depastured to grant a warrant for the immediate seizure and detention of such flocks until the same can be properly examined as hereinafter provided and the fact determined as to their being so infected or otherwise and if upon examination such sheep prove to be infected the proprietor thereof shall be liable to the penalties imposed by this Ordinance but if they be proved to be free from such infection the person so informing shall be liable to defray to the proprietor all expenses and damages which may ensue from the seizure and detention as aforesaid to be assessed and recovered by and before any two or more Justices of the Peace

Justices to grant warrant for seizure and detention of sheep suspected to be infected.

XII. And be it enacted that upon information made before any Justice of the Peace by any proprietor or overseer in charge of sheep or lambs or other person that flocks are infected with the said disease and are turned out kept depastured driven or conducted contrary to the provisions of this Ordinance it shall be lawful for such Justice on payment of such a sum as may meet the estimated expences not exceeding ten pounds or upon giving security for the same to the satisfaction of such Justice and either before or after issuing summons or notice being given to grant a warrant under his hand to some fit and proper person to be named by such Justice in the warrant to authorise him to examine such flocks and if necessary to cause the same to be driven to the nearest pen where the same are ordinarily kept for examination and any proprietor or person in the charge of such sheep or lambs who shall refuse to allow the same to be examined or shall refuse or neglect when so required to cause them to be driven to the nearest pen for examination shall be subject to such and the like fines and penalties as by this Ordinance are imposed and inflicted for turning out keeping depasturing driving or conducting any sheep or lambs contrary to the provisions hereof

Justices may grant warrant for examination of sheep alleged to be diseased.

hereof: And any Defendant who shall render necessary any such examination by denying the fact that any flock in question is infected with the said disease shall if convicted of offending against the provisions of this Ordinance be liable in the full costs and expenses of such examination to be awarded by the convicting Justice over and above the ordinary costs of conviction.

Limitations of actions against Justices &c.

XIII. And be it enacted that no action at Law shall lie against any Justice of the Peace or constable for any matter or thing which may be done or commanded by them or any of them in pursuance of the provisions of this Ordinance unless there be direct proof of corruption or malice and unless such action be commenced within one calendar month after the cause of action or complaint shall have arisen and if any Justice or constable shall be sued for any matter or thing done in pursuance of this Ordinance the Defendant or Defendants in any such action may plead the general issue and give this Ordinance and the special matter in evidence.

Limitation of convictions.

XIV. And be it enacted that no conviction shall be had under this Ordinance in any case happening more than three months before the time of laying the information or complaint and notice in writing of such information or complaint shall be given to the Defendant within one month from the cause thereof arising.

No certiorari.

XV. And be it enacted that no order or judgment or other proceedings made touching any of the matters aforesaid or touching the conviction of any offender against this Ordinance shall be quashed for want of form only or be removed or removeable by *certiorari* or any other writ or process whatsoever into the Supreme Court.

Appropriation clause.

XVI. And be it enacted that all fines and penalties which shall be levied under this Ordinance shall be paid as follows that is to say—one third part to the person informing or leading to the conviction and the remaining two thirds to the Colonial Treasurer on behalf of Her Majesty her heirs and successors for the public uses of the Province and support of the Government thereof: And in case of there being no such information then the whole to the Colonial Treasury for the uses aforesaid: Provided always that it shall be lawful for the Governor to remit all such fines and penalties in whole or in part.

Proceedings for recovery &c.

XVII. And be it enacted that all fines penalties and other sums of money levied or incurred under this Ordinance may be recovered and all proceedings had and taken in as far as not otherwise expressly mentioned in a summary way before any one or more Justices of the Peace

Peace and every party aggrieved shall be entitled to appeal in manner and form respectively provided by the Law of the Province for regulating summary proceedings before Justices of the Peace.

XVIII. And in order to facilitate proof be it enacted that in any information or proceedings had under this Ordinance or under an Ordinance passed on the twenty-fourth day of November one thousand eight hundred and forty-two intituled "An Act to protect the Waste Lands of the Crown in South Australia from encroachment intrusion and trespass" the averment that any lands in question are unappropriated Waste Lands of the Crown shall be sufficient without proof of such fact unless the Defendant shall prove the contrary and all maps plans licenses certificates and office copies certified as true under the hand and seal of the Surveyor General of the Province or of the proper officer of his department or of any Commissioner of Crown Lands shall in all matters relating to the said respective offices be sufficient evidence of their contents without production of original records and without the personal attendance of such officers or proof of their signatures and proof of one diseased sheep having been found in a flock shall be sufficient evidence of the flock being diseased. Facilitating proof.

GEORGE GREY,
Governor and Commander-in-Chief.

*Passed the Legislative Council, this Twenty-first
day of February, 1844.*

W. L. O'HALLORAN,
Clerk of Council.

SCHEDULE A.

Warrant for removal of Diseased Sheep.

DISTRICT of _____ in the Province of South Australia We two of Her Majesty's Justices of the Peace for the said District in pursuance of an Ordinance of the Governor in Council passed in the Seventh and Eighth Year of Her present Majesty's Reign intituled "An Ordinance to prevent the Extension of the Scab in Sheep in South Australia" having had proof made to our satisfaction of sufficient reason for the removal of certain sheep [or lambs as the case may be] infected with the said disease belonging to or under the charge of _____ now depasturing at _____ and that the said stocks have been duly dressed do hereby in pursuance of the powers by the said Ordinance in us vested authorise the said _____ or his overseers to drive or conduct the said sheep or lambs being _____ in number to [specify the place] by [here point out the route being the nearest or that by which the flock is the least likely to spread the infection] notice of removal being given at least twenty-four hours previously to every Master or Overseer of sheep through or adjoining whose run the route may pass. This warrant to be and continue in force for _____ (not exceeding one calendar month) from the date hereof.

Given under our hands at

this

day of

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A. B. J.P.

C. D. J.P.

SCHEDULE B.

*Form of Warrant for removing Sheep after conviction.*District of _____ }
in the Province of South Australia. }

I A. B. (or we A. B. and C. D.) Justice (or Justices) of the Peace for the district of _____ in the Province of South Australia having this day convicted E. F. of (or G. H. Overseer of E. F. of _____) of having turned out (kept depastured driven or conducted as the case may be) certain sheep (or lambs) (infected with the disease called the scab the property of the said E. F.) contrary to the provision of the Ordinance of the Governor and Council in such case made and provided and it having been made to appear to my (or our) satisfaction that it is necessary to remove the said sheep (or lambs) to _____ in the district of _____ where the same may be lawfully turned out kept and depastured do hereby in pursuance of the authority in me (or us) vested by a certain Ordinance of the said Governor and Council passed in (mention the title of the Ordinance) authorise and direct the said E. F. (or the said G. H. overseer of the said E. F.) to drive or conduct the said sheep (or lambs) or to cause the same to be driven or conducted to _____ aforesaid by (here point out the nearest or most convenient route or that by which the said sheep or lambs are the least likely to spread the infection). This warrant to be and continue in force from the date thereof until the _____ day of _____

Given under my hand (or our hands) at _____ this _____ day of _____ one thousand eight hundred and _____

A. B.
C. D.

ADELAIDE:

Printed by authority, by Archibald Macdougall, Government Printer, Rundle-street.

Here set out the offence in words of the Ordinance.